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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,325	12/14/2001	Bradley Taylor	MPT-003	4911
22888	7590	02/24/2006	EXAMINER	
BEVER HOFFMAN & HARMS, LLP TRI-VALLEY OFFICE 1432 CONCANNON BLVD., BLDG. G LIVERMORE, CA 94550			COULTER, KENNETH R	
			ART UNIT	PAPER NUMBER
			2141	

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/022,325	Applicant(s) TAYLOR, BRADLEY	
	Examiner Kenneth R. Coulter	Art Unit 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 25-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11-20 and 25-27 is/are rejected.
- 7) ☒ Claim(s) 7-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2005 and 14 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 11 – 20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 11 – 20 are directed to software that is not implemented on a computer-readable **storage** medium.

Data structures not claimed as embodied in computer-readable **storage** media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2141

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 – 6, 11 - 16 and 25 – 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Cho (U.S. Pat. No. 5,978,452) (Voice Data Recording and Transmitting Method and Apparatus for Facsimile Linked to Personal Computer).

4.1 Regarding claim 1, Cho discloses a method of providing a fast path message transfer agent, the method comprising:

receiving bytes of a message over a network connection (Abstract; Fig. 1; col. 3, lines 58 - 64);

determining whether the number of bytes exceeds a predetermined threshold, wherein if not, then writing the message only to a memory, and wherein if so, then writing the message to the memory and a non-volatile storage (col. 4, lines 35 – 49 “**sending the *overflow* of voice messages from the voice message memory 130 to an auxiliary memory** such as a ***hard disk*** of the PC 138 for storage.”).

4.2 Per claim 2, Cho teaches the method of claim 1, wherein writing the message to the memory and the non-volatile storage includes:

writing a portion of the bytes up to the predetermined threshold to the memory; and storing a remainder of the bytes onto the non-volatile storage (col. 4, lines 35 – 49).

Art Unit: 2141

4.3 Regarding claim 3, Cho discloses the method of claim 2, wherein writing the message to the memory and the non-volatile storage further includes:

determining whether all bytes of the message have been received (Abstract; Fig. 1; col. 3, lines 58 – 64; col. 4, lines 35 – 49);

wherein if not, then receiving additional bytes of the message over the network connection (Abstract; Fig. 1; col. 3, lines 58 – 64; col. 4, lines 35 – 49); and

writing the additional bytes onto the non-volatile storage (Abstract; Fig. 1; col. 3, lines 58 – 64; col. 4, lines 35 – 49); and

wherein if so, then proceeding to re-route the message (Abstract; Fig. 1; col. 3, lines 58 – 64; col. 4, lines 35 – 49).

4.4 Per claim 4, Cho teaches the method of claim 3, wherein if the number of bytes is less than the predetermined threshold and all bytes of the message have been received, then proceeding to re-route the message (Abstract; Fig. 1; col. 3, lines 58 – 64; col. 4, lines 35 – 49).

4.5 Regarding claim 5, Cho discloses the method of claim 4, further including:

accessing the message (Abstract; Fig. 1; col. 3, lines 58 – 64; col. 4, lines 35 – 66);

sending the message to each destination (Abstract; Fig. 1; col. 3, lines 58 – 64; col. 4, lines 35 – 66); and

determining whether the message was received successfully by each destination (Abstract; Fig. 1; col. 3, lines 58 – 64; col. 4, lines 35 – 66 “alerting the user”).

4.6 Per claim 6, Cho teaches the method of claim 5, wherein if the message was received successfully by each destination, then

indicating a successful receipt of the message (Abstract; Fig. 1; col. 3, lines 58 – 64; col. 4, lines 35 – 66).

However, Cho does not explicitly disclose **deleting** the message from the memory and the non-volatile storage.

Such a scenario is inherent in clear the memory for later use with large messages.

4.7 Regarding claims 11 - 16 and 25 – 27, the rejection of claims 1 – 6 under 35 USC 102(b) (paragraphs 4.1 – 4.6 above) applies fully.

5. Claims 1 – 6, 11 - 16 and 25 – 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Stanczak et al. (U.S. Pat. No. 5,974,414) (System and Method for Automated Received Message Handling and Distribution).

5.1 Regarding claim 1, Stanczak discloses a method of providing a fast path message transfer agent, the method comprising:

receiving bytes of a message over a network connection (Abstract; Figs. 4, 5; col. 5, lines 13 - 24);

determining whether the number of bytes exceeds a predetermined threshold, wherein if not, then writing the message only to a memory, and wherein if so, then writing the message to the memory and a secondary storage (Abstract; Figs. 4, 5; col. 5, lines 13 – 24; col. 8, lines 17 – 26 and 46 – 65 “If the number of DEMs in the DMQ 415 reaches the warning threshold ...”; “messages can be moved from one queue to another (less busy queue) either manually or automatically, when a particular threshold is reached.”).

However, Stanczak does not explicitly disclose that the secondary storage is a non-volatile storage.

It would have been inherent to implement a non-volatile storage as the secondary storage in Stanczak because a large, inexpensive non-volatile storage (such as a hard disc) may be necessary to handle large messages that have overflowed in the primary storage.

5.2 Per claim 2, Stanczak teaches the method of claim 1, wherein writing the message to the memory and the non-volatile storage includes:

writing a portion of the bytes up to the predetermined threshold to the memory; and storing a remainder of the bytes onto the secondary (non-volatile) storage (Abstract; Figs. 4, 5; col. 5, lines 13 – 24; col. 8, lines 17 – 26 and 46 – 65).

5.3 Regarding claim 3, Stanczak discloses the method of claim 2, wherein writing the message to the memory and the non-volatile storage further includes:

determining whether all bytes of the message have been received (Abstract; Figs. 4, 5; col. 5, lines 13 – 24; col. 8, lines 17 – 26 and 46 – 65);

wherein if not, then receiving additional bytes of the message over the network connection (Abstract; Figs. 4, 5; col. 5, lines 13 – 24; col. 8, lines 17 – 26 and 46 – 65); and

writing the additional bytes onto the non-volatile storage (Abstract; Figs. 4, 5; col. 5, lines 13 – 24; col. 8, lines 17 – 26 and 46 – 65); and

wherein if so, then proceeding to re-route the message (Abstract; Figs. 4, 5; col. 5, lines 13 – 24; col. 8, lines 17 – 26 and 46 – 65).

5.4 Per claim 4, Stanczak teaches the method of claim 3, wherein if the number of bytes is less than the predetermined threshold and all bytes of the message have been received, then proceeding to re-route the message (Abstract; Figs. 4, 5; col. 5, lines 13 – 24; col. 8, lines 17 – 26 and 46 – 65).

5.5 Regarding claim 5, Stanczak discloses the method of claim 4, further including:
accessing the message (Abstract; Figs. 4, 5; col. 5, lines 13 – 24; col. 8, lines 17 – 26 and 46 – 65);

sending the message to each destination (Abstract; Figs. 4, 5; col. 5, lines 13 – 24; col. 8, lines 17 – 26 and 46 – 65); and

Art Unit: 2141

determining whether the message was received successfully by each destination (Abstract; Figs. 4, 5; col. 5, lines 13 – 24; col. 8, lines 17 – 26 and 46 – 65).

5.6 Per claim 6, Stanczak teaches the method of claim 5, wherein if the message was received successfully by each destination, then

indicating a successful receipt of the message (Abstract; Figs. 4, 5; col. 5, lines 13 – 24; col. 8, lines 17 – 26 and 46 – 65).

However, Stanczak does not explicitly disclose **deleting** the message from the memory and the non-volatile storage.

Such a scenario is inherent in clear the memory for later use with large messages.

5.7 Regarding claims 11 - 16 and 25 – 27, the rejection of claims 1 – 6 under 35 USC 102(b) (paragraphs 5.1 – 5.6 above) applies fully.

Response to Arguments

6. Applicant's arguments with respect to claims 1 – 6, 11 - 16 and 25 – 27 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

7. Claims 7 – 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Helliwell (U.S. Pat. No. 6,751,667) System for Generating Unique Identifiers in a Computer Network

A system for generating unique identifiers for software objects where a unique identifier field is stored in volatile RAM. When the RAM field overflows, the field stored in non-volatile memory is incremented (Abstract).

Stanczak et al. (U.S. Pat. No. 6,631,399) (System and Method for Automated Received Message Handling and Distribution)

Continuation of U.S. Pat. No. 5,974,414

Hathaway et al. (U.S. Pat. Pub. No. 2003/0061269) Data Flow Engine

Art Unit: 2141

A data flow engine that stores objects in the current flow engine or down the pipeline to a flow engine with available memory (includes a high/low threshold in memory) (paragraph 94).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on 5 4 9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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